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AUTHOR Reyes, Augustina H.
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ABSTRACT

This paper defines site-based budgeting as a tool for restructuring schools through meaningful participation. It also describes the legal dimensions of site-based budgeting, with an emphasis on Texas. The following legal principles are discussed: public oversight of public dollars, deregulation of governmental powers, equal protection, preservation of fiscal accountability, integrity of categorical programs, and liability. Texas' school-budgeting plan is used as an example of a negotiated, deregulated/decentralized budgeting system. Four major legal implications for site-based budgeting include: (1) preserving fiscal accountability; (2) maintaining economies of scale and district efficiency; (3) maintaining the integrity of categorical services; and (4) possible liability of the members of decision-making bodies. A conclusion is that an increase in local control could conceivably be gained at the expense of centralized economies, fiscal accountability, and constitutional and civil rights. In addition, there is no guarantee for the effectiveness of decentralized budgeting practices. A modified decentralized process is advocated, which strikes a balance between total decentralization/deregulation and a meaningful site-based budgeting and decision-making process. (LMI)

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The Legal Implications of Site-Based Budgeting

Augustina H. Reyes
Assistant Professor
Dept. of Educational Administration
Texas A&M University
College Station, Texas 77843-4226
409-862-2421

Augustina Reyes, 1994

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Abstract

The purpose of this paper is to define site-based budgeting as a tool for restructuring schools through meaningful participation and to define the legal dimensions of site-based budgeting, with an emphasis on the state of Texas. The following legal principles are discussed: public oversight of public dollars, deregulation of governmental powers, equal protection, preservation of fiscal accountability, integrity of categorical programs, and liability.

The Legal Implications of Site-Based Budgeting

Introduction

Site-Based Budgeting, a component of site-based management, is part of a larger movement that symbolizes the push for deregulation in government and decentralization of public schools. Site-based management offers a process to decentralize the schools by involving stakeholders in meaningful participatory school governance. The decision-making structure is transformed from a hierarchical structure to a more flattened, participatory structure. Those closest to the decisions make the choices of staffing, curriculum, pedagogy, organization, staff development, general goals, and budget. Site-based budgeting is a tool that schools can use to align curriculum, instructional, and organizational processes and functions with the budgeting process (Reyes, 1994). The goal of site-based budgeting is to improve performance by providing the resources necessary for customized, campus-based school educational and school improvement plans. The purpose of this paper is to define site-based budgeting as a tool for restructuring schools through meaningful participation and to define the legal dimensions of site-based budgeting, with an emphasis on the state of Texas.

Defining the Theory of Decentralization/Deregulation

Decentralization is derived from the philosophy of deregulation. Deregulation is a business philosophy that has been applied to government service, including public schools. In business, deregulation means that an institution relies on the market discipline shaped by government incentives (taxes, fees, and the rule of law) to balance the most efficient use of scarce resources with reasonable attention to collective goals (Dilulio, 1994). The following are the themes of government deregulation:

1. Clear away government rules, regulations, and procedures that tie the hands of dedicated public servants who come from the most able and self-sacrificing citizens;
2. Improve government administration by making government more responsive, accountable, and cost effective while maintaining the progressive ideals of efficiency, honesty, and confidence in government;

3. Reduce the size of government;
4. Make government more flexible so administrators can make personnel decisions more easily;
5. Make government more flexible and give public officials more discretion to promote better vendor performance;
6. Deregulate site budgets and civil service requirements so that administrators have the discretion to hire, and at the pay levels to get the job done;
7. Deregulate site budgets to allow administrators the discretion to pay and reward to retain good employees;
8. Reduce the size of government by decentralizing personnel and purchasing systems and removing layers of government workers;
9. Reduce restrictive personnel, job, and procurement regulations;
10. Make the environment more creative and productive by through deregulation and competition;
11. Save money by increased productivity.

In education, deregulation means allowing schools to operate in a regime where, to the greatest extent, they are judged by outcomes (achievement scores) and not inputs(whom they hire, who the student population is, where they operate, which curricula they use, etc.). The results are market driven, to the extent that the public education sector accommodates market forces and its ambiguous products. The concern with full deregulation of pubic schools is the absence of a history and research, in addition to the fact that there are many public schools that already perform very well. However, the modified form of deregulation found in school decentralization efforts like site-based management and site-based budgeting offer real opportunities for school restructuring. According to Dilulio (1994), deregulation and markets work well where there is adequate consumer information, competition among purveyors, real consequences (loss or gain of personal revenue) for successful and unsuccessful competitors, and no fraud. In instances where services cannot or will not be supplied through the market, as in the case of public schools, the challenge is to find ways to make schools innovative, mission driven, and

results oriented, even when they retain their monopoly status. Modified school decentralization holds that promise.

Decentralization represents the efforts of school districts to incorporate the deregulation philosophy. Site-based management focuses on the goal to improve student performance by making those closest to the delivery of services more independent in making organization, curriculum, instruction, staff development, staffing, and budget decisions (Clune, 1988; Levin, 1987; Weiler, 1989). In return for participation and ownership, stakeholders are more responsible for the results of the school's operations. Hans Weiler (1989) identifies three models based on decentralization theories: sharing of power theory, efficiency theory, and cultures of learning theory. The sharing of power model is based on the theory of redistribution of authority over the allocation of resources and regulatory behavior. The sharing of power model requires that a school district reorganize its regulatory powers over schools, teachers, students, and parents and its control of human, material, and financial resources, to share those powers with the school site. Legal constraints and economies of scale will require that many functions remain centralized. Site-based budgeting, a power sharing approach, is founded on the theory of redistribution. The efficiency model is based on the premise that decentralization can produce considerable efficiencies in the management of education systems. The theory is that stakeholders, in return for a greater say in the making of educational decisions, will provide a stronger sense of commitment that translates into maximization of existing resources and new resources not available under a centralized system. In the short term, the efficiency model experiences a diminishing of economies of scale. In the long term, efficiency is increased as school sites become so familiar with the school's clients that mismatches are virtually eradicated. The efficiency model also has implications for site-based budgeting. The third decentralization model, cultures of learning model, is based on the premise that schooling will be more productive if the mismatch between the students' background and the school's learning environment is reduced; in this formulation, diversity and the importance of different cultural environments in a society are also recognized (Cardenas, 1976; Weiler, 1989.)

The legal constraints embedded in the competing interests among decentralization theory and federal and state political and economic interest make total school decentralization impossible. The needs for a democratic form

of government or civic needs are going to supersede individual choice. For example, the need for a national language and economic competitiveness of uniform systems of technology and communication will supersede the individual choice of each school to use a separate language and culture of instruction. This does not forbid the use of bilingual instruction; it merely subjects it to the constraints of national and state policy or regulations. Decentralization as a conflict management tool takes the conflict out of issues like desegregation, religion in the schools, family values, declining family, bilingual education, special education, race, drugs, crime, and poverty. Decentralization promises to resolve conflict issues on a local level without dividing the country. Finally, the new participation in decentralization will re-legitimize public education. The constraints on decentralization come from protecting national interests, protecting civil rights, rooting out conflicts of interests, supporting due process, preserving fiscal accountability, and ensuring citizen access.

The Legal Implications for Site-Based Budgeting

There are two models of site-based budgeting: (1) a true market-driven and completely decentralized system which is created by the state legislature; and (2) a modified deregulated/decentralized system which operates under a state's site-based management law. This paper only addresses the issues of a negotiated deregulated/decentralized budgeting system, and uses Texas as an example of such legislation. The Texas legal issues examined here are based on the approval of legislative recommendations that will submitted to the 1995 Texas Legislature. The legal constraints for a modified deregulation/decentralized site-based budgeting system as a component of decentralization focus on preserving fiscal accountability. How do schools account for federal, state, and local public funds and produce effective and efficient learning environments? What are the consequences of improper budgeting procedures? What are the consequences and costs when one replaces one centralized expert in fiscal accountability with a dozen to hundreds of semi-experts?

While site-based management may appear to some to be the answer to all that ails education, there are legal implications for preserving due process and protecting civil rights, and national interests. These issues are unique to the credibility of American democracy. It has taken over 200 years of evolution to

arrive at a place in our imperfect society where it appears that the majority of the American people have democratic rights. The major legal implications for site-based budgeting are embedded in the general oversight of the public's tax dollar and the preservation of fiscal accountability. Oversight of public dollars incorporates legal issues related to the principle of the delegation of governmental powers and equal protection. The second major legal implication for site-based management has to do with maintaining economies of scale and district efficiency. Economies of scale incorporate legal concerns related to the concentration of expert knowledge and purchasing activities which have implications for criminal activity. The third legal implication for site-based budgeting is maintaining the integrity of categorical services. Maintaining the integrity of categorical programs includes civil rights issues and issues of equal access. The fourth legal implication for site-based management and budgeting committees is the issue of personal liability (Dilulio, 1994; Frels, 1992; Walker and Roder, 1993).

Preserving fiscal accountability is embedded in the concept of the general oversight of the public's tax dollar. This concept is different from the concept of private enterprise which has oversight of one's own money or that of a few select individuals who choose to be stockholders. In the public enterprise, everyone contributes their money to the tax coffers. In an Illinois case, Fumarolo v. Chicago Board of Education, 566 N.E. 2d 1283 (Ill. 1990), the Supreme Court of Illinois ruled that the Chicago School Reform Act violated the equal protection guarantees of the Illinois and federal constitution because local taxpayers who did not currently have children attending Chicago schools were denied a vote on the local school councils equal to that of voters who did have children in the public school. The court's ruling was based on its finding that the local school councils perform a general governmental function which affects the entire community (Walker and Roder, 1993.)

According to SS 3 of the Texas Constitution, the ultimate authority for fiscal accountability rests within the state legislature as does the authority to create school districts and governing boards that assume those public responsibilities: "The Legislature shall be authorized to pass laws for the assessment and collection of taxes in all said districts and for the management and control of the public schools . . . . The state legislature is authorized with assessment, collection, and management of public funds." Boards of education are publicly-elected or publicly-appointed bodies that have been entrusted with

the oversight of public dollars. In site-based budgeting a question arises about how much of the board's power can the board delegate to site-based management and budgeting councils? The legal principle that prohibits delegation of governmental powers by agencies like school boards constitutes a legal constraint to site-based budgeting. While some responsibilities delegated to "school employees" reduce the possibilities of conflicts of interests, Texas law clearly designates the superintendent as the individual to whom budgeting and accounting responsibilities may be delegated (SS 21.403.) Absent that clear legislative authority, the general rule to follow is that the board must perform all public duties and governmental powers (Collins, 1994).

Another legal consideration for transferring the powers of the school board to a site-base management and budgeting council is the issue of whether or not that constitutes, directly or indirectly changing or diminishing the powers of the elected board, subject to pre-clearance by the justice department for violations of Sections 2 and 5 of the Voting Rights Act of 1965. In Presley v. Ethowa County Commission, 112 S. CT. 820 (1992), the U. S. Supreme Court ruled that the transfer of duties was not a change with respect to voting for which the Voting Rights Act requires pre-clearance. The court ruled that as long as significant substantive powers remain in the elected board of trustees, the transfer does not appear to require Section 5 pre-clearance (Collins, 1994). Even so, given the volatility of VRA litigation, observers can expect this to be a very fluid area of concern and one that certainly is better left to centralized expertise.

One of the advantages of a centralized budgeting system is that the central system maintains expert knowledge in fiscal accountability, including budget revenues, expenditures, and reporting. These offices have expert knowledge in "generally accepted accounting principles," and the ability to develop, maintain, and file federal and state accounting reports necessary to assure the integrity of fiscal accountability. The state requires that school districts file a number of reports that are related to fiscal management requirements and the school finance law, which in states like Texas may also affect equity litigation. State Foundation School Program formulas are based on average daily attendance which must be reported to the state in district prepared-reports. School districts are required to participate in the Public Education Information Management System (PEIMS) in order to provide the state with a campus-based accounting of state dollars and state programmatic requirements.

PEIMS reports include the district-approved budget and the end of the year audited or actual budget. In order to participate in the state's school finance program, districts must submit an annual report of the amount of tax dollars collected by the district.

Falsification or alteration of any of these reports constitutes a felony, and while Texas allows waivers from state law to enhance restructuring, SS 11.273 prohibits waivers for any requirements imposed by federal law or rule and any prohibition on conduct constituting a criminal offense (Texas Education Code, 1994). According to section 31.03 of the Penal Code, it is a crime for any person to confiscate, misappropriate or convert money appropriated to the Foundation School fund, or to falsify any record, form, report, or budget. According to section 31.10 of the Penal Code, it is a crime to tamper with any governmental records, including budgets. It is also a crime to fail to comply with any duties regarding the preparation of the budget. Failure to report properly may be more likely in a decentralized system.

Economies of scale apply to material purchases and to human resources or units of expert knowledge. In school districts with multiple campuses, such as the Houston public school district, which has 237 campuses, it is inefficient to unnecessarily recreate 237 site-based fiscal accountability experts to replace one central office unit. It is irresponsible because by doing this, a district increases the margin of error from one central unit to 237 units, placing the integrity of fiscal accountability at risk of faulty accounting and reporting. In the end of full decentralization, one will have school accountants looking for other schools with which to recentralize fiscal accountability or just to have someone to serve as a sounding board for common practices.

The second legal implication for site-based budgeting has to do with maintaining economies of scales and district efficiency. While economies of scales are related to productive use of concentrations of expert knowledge in human resources, they are mostly identified with purchases of material resources that produce districtwide efficiencies. Economies of scale for material resources produce districtwide savings by purchasing large quantities at reduced costs. Districts purchase everything from cleaning supplies to copy paper in bulk, with great savings on the unit. There are some purchases that affect student needs and student achievement more than others and are unique to the site-based decisions affecting the school improvement process. For example, a site-based decision-making committee may choose to purchase

a Distar program, content exams, a special science program, or accelerated school training. Each of these purchases is related to the unique needs of the school improvement plan and requires site-based decisions; however, there is no research that shows the relationship between the kind of copy paper a school uses and achievement. There are many such purchases. The rule for distinguishing site-based supplies, materials, leases, and service purchases from centralized economies of scales ought to be based on whether or not the purchase's value can be measured by the school's expected growth outcomes. However, when site-based management and budgeting committees purchase supplies, materials, leases, and services they need to adhere to conflicts of interest laws, purchasing and general service laws, and competitive bidding laws. Title 20, Purchasing and General Services Commission and Chapter Three, Professional Services Procurement Act, set parameters that school boards must observe in procuring professional services and general services. State contracts and competitive bidding laws require that schools follow state purchasing, contract, and competitive bidding laws. Violations of said laws are punishable as a Class C misdemeanor and by immediate removal from office or employment. Bid-rigging by vendors is a violation of state antitrust legislation and the Sherman Antitrust Act. Even under the best centralized business practices school districts are often the victims of the sophisticated bid-rigging practices of milk companies, bread companies, bus companies, and other vendors. Illegal bid-rigging practices directly targeted at school districts is not rare (Rist, 1993). Under inexperienced, decentralized systems and dismantled purchasing infrastructures, schools may be less prepared to detect such illegal activity and may be ripe for the picking.

Conflicts of interests are governing improprieties related to purchasing supplies, materials, leases, or services. Conflicts of interest arise when a "local official" influences or votes for the purchase of supplies, materials, leases, or services in which the official has a substantial interest. The Local Government Code, section 171.001 defines "local pubic official" as "a member of the governing body or another officer, whether elected, appointed, paid, or unpaid, of any district (including a school district), county, municipality, precinct, central appraisal district, transit authority or district, or other local governmental entity who exercises responsibilities **beyond those that are advisory in nature**." The questions for site-based management and budgeting committees are: When are the responsibilities of committee members

considered "beyond those that are advisory in nature?" In the Fumarolo case, the Illinois Supreme Court ruled that the committee members were performing a governmental function. Is it important that each campus have expert knowledge about conflict of interests and equal protection or is it more prudent to maintain centralized expert knowledge?

The third legal implication for site-based budgeting is to maintain the integrity of categorical programs. The integrity of categorical programs is embedded in the state's school finance system which allocates additional funding weights to students with special needs like special education, bilingual education, gifted and talented, compensatory education, and vocational education. The intent of categorical programs is to provide an equal opportunity for special needs students by providing additional funding to improve the "quality" of instructional program that a categorical student receives. While we deal with categorical programs as a budgeting issue, these programs may have civil rights and access roots. For example, if a site-based budgeting committee decides to do away with services to bilingual, compensatory education, special education, or gifted and talented students, to what extent do the parents have access to the school's decision-making process? Under Title VI, school districts have legal obligations to provide instruction in children's native language. Under other programs, such as Migrant Education, school districts are required to provide special services to this mobile population. Under the Education Of All Handicapped Children Act, educators must work out individualized programs for children with disabilities. These long-standing legal obligations will not disappear simply because a decentralized school decides it cannot afford or does not want to deliver these services. Moreover, there are long-standing constituencies organized around these interests; for instance, parents of special education children are often very well organized and litigious. To what extent is the site-based budgeting or management committee acting as a policy body and subject to liability on these issues? According to Walker and Roder (1993), parents who serve on site-based management or budgeting councils could be personally liable if the committee makes decisions that violate constitutional or other rights. Committees that behave like policy bodies are particularly vulnerable for civil rights violations. The question is what is a policy behavior? Does the Fumarolo definition of performing a "governmental function" qualify as policy behavior?

A fourth legal implication for site-based budgeting has to do with the site-based budgeting or management committees acting as the final say, behaving like policy bodies, and subjecting individual members to liability. According to Walker and Roder (1993), it is conceivable that parents/or community leaders who serve on a school based management committee could be personally liable for decisions made by the committee which violate constitutional or other rights. In Fumarolo, the Illinois court ruled that the site-based council was performing a governmental function. The Texas Civil Practice and Remedies Code SS 104.002 provides that the state is liable for indemnification if the damages arise out of a cause of "action for deprivation of a right, privilege, or immunity secured by the constitution or laws of this state or the United States, except when the court in its judgment or the jury in its verdict finds that the person act in bad faith, with conscious indifference or reckless disregard." While state liability covers school board members, it does not cover volunteers.

There are a number of other issues related the legal implications of site-based budgeting including revenue raising and receiving authority and property ownership. According to *Texas Education Code*, 23.26, school boards "constitute a body corporate and in the name of the school district may acquire and hold personal property, sue, and be sued, and receive bequests and donations or other moneys or funds coming legally into their hands." Finally, if budgeting were totally decentralized in Texas, who would be legally responsible for raising and receiving revenues? How would that effect equity issues? Texas boards of education retain fiscal oversight, property ownership power, taxing and bonding power, and budget approval power. School boards must receive all funds designated for the public schools, including private donations (SS 21.903). Chapter 23.27 of the Texas Education Code gives the school board the "power to levy and collect taxes and to issues bonds." Does total decentralization mean that each site-based budgeting or management committee assumes the role presently assume by boards of education?

Conclusion

There is a very strong and powerful intuitive argument that smaller may be better, especially in sprawling urban districts that encounter so many problems; however the cure of decentralization may be worse than the ailment of centralized public education. Decentralization is still an experiment. Because there have been no long-term successful decentralization efforts or

programs, it is essentially an article of faith or an act of hope that decentralization can address many of the systemic problems of urban systems; however, the legal issues sketched above suggest that there may be a hydraulic principle at work: the increase in local control and site-based budgeting could conceivably come at the expense of centralized economies, controls including fiscal accountability, constitutional rights, and civil rights. Finally, there is no guarantee that decentralization is a sure bet; it may work better at some levels and some degrees than other levels and degrees or in a modified form.

The opportunities in site-based budgeting and management lie in a modified decentralization/deregulation process that strikes a balance between total decentralization/deregulation and a meaningful site-based budgeting and decision-making process. Modified decentralization provides control over the finances necessary to develop a school's customized education plan, preserves fiscal accountability, and is driven by mission and results in the challenge for innovation in solving the tough issues in education like diversity, poverty, and crime.

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